

Message Text

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INFO USMISSION USBERLIN
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MUNICH FOR CHARIG

E.O. 11652: N/A
TAGS: PGOV CPRS GW GE US
SUBJECT: OVERLAPPING GERMAN CLAIMS

REFS: (A) STATE 106953; (B) STATE 108032;
(C) STATE 196719

SUMMARY. THE EMBASSY HAS RECEIVED FROM THE PRESIDENT OF THE FRG FEDERAL EQUALIZATION OFFICE (SCHAEFER) A PAPER EXPLAINING THE FRG PROPOSAL CONVEYED BY THE FRG EMBASSY IN WASHINGTON TO THE DEPARTMENT ON APRIL 26, 1978. THE EMBASSY USED THE OPPORTUNITY OF SCHAEFER'S VISIT TO EXPLAIN THE PROBLEMS PERCEIVED BY THE DEPARTMENT AND WAS GIVEN AN EXPLANATION OF THIS PROBLEM FROM THE FRG POINT OF VIEW. END SUMMARY.

1. EMBOFF IN MAY ON THE BASIS OF REFTEL (A) INFORMED RUMPF (FONOFF LEGAL SECTION) IN PARTICULAR OF DIFFICULTIES USG WOULD HAVE IF US LEGISLATIVE BASIS SHOULD BE NECESSARY TO RESOLVE CURRENT PROBLEM ALONG THE LIMITED OFFICIAL USE

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LINES PROPOSED BY THE FRG.

2. PURSUANT TO REFTEL (B), EMBOFF REQUESTED RUMPF TO SOLICIT EXPLANATION FROM THE FEDERAL EQUALIZATION OFFICE (BAA) OF MEANING OF THE PASSAGE IN THE GERMAN PROPOSAL WHICH THE EMBASSY ALSO HAD NOT BEEN ABLE TO UNDERSTAND. THE LETTER FROM THE BAA TO THE FONOFF DATED JULY 17, A

COPY OF WHICH WAS SENT TO THE EMBASSY AUGUST 12, DID NOT SHED MUCH LIGHT ON THE PRECISE EXPECTATIONS OF THE BAA. THE EMBASSY THEREUPON CALLED THE PRESIDENT OF THE BAA, SCHAEFER, TO SEEK A CLARIFICATION, AND SCHAEFER AGREED TO VISIT THE EMBASSY A FEW DAYS LATER WHILE IN BONN ON OTHER BUSINESS.

3. AT A MEETING AUGUST 17 WITH EMBASSY LEGAL ADVISER, SCHAEFER PRODUCED A PAPER WHICH INCLUDES TWO ALTERNATIVE METHODS OF CALCULATING THE AMOUNT OF MONEY THAT WOULD, UNDER THE GERMAN PROPOSAL, BE DIVERTED FROM ANY FUNDS EVENTUALLY RECEIVED FROM THE GDR IN A CLAIMS SETTLEMENT, AND PAID INTO THE FRG EQUALIZATION FUND.

4. WHILE EMBOFF THANKED SCHAEFER FOR THIS EXPLANATION, HE STATED THAT THE FRG PROPOSAL WOULD REQUIRE AUTHORITY THAT COULD COME ONLY FROM THE CONGRESS, AND THAT BOTH SEEKING AND OBTAINING SUCH AUTHORITY WAS DEEMED TO BE POLITICALLY UNDESIRABLE. THE EMBASSY AND THE DEPARTMENT UNDERSTOOD THAT THE EQUALIZATION FUND (EF) AND PAYMENTS FROM IT WERE DESIGNED TO SPREAD THE BURDEN OF LOSSES FROM WW II MORE EQUALLY AMONG GERMANS AFFECTED AND THOSE NOT AFFECTED. THE EF WAS NOT A SOURCE OF FUNDS FOR RESTITUTION DESIGNED TO ASSIST PERSONS PERSECUTED FOR POLITICAL OR RACIAL REASONS. HOWEVER, IT WOULD BE NEXT TO IMPOSSIBLE TO MAKE THIS UNDERSTANDABLE EITHER TO LIMITED OFFICIAL USE

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THE CONGRESS OR TO THE HEIRS OF PERSONS WHO RECEIVED PAYMENTS FROM THE EQUALIZATION FUND.

5. SCHAEFER SAID THAT WHILE HE COULD UNDERSTAND THAT THERE WERE PROBLEMS ON THE US END, HIS PROBLEM WAS TO ENSURE THAT THE ADVANCE PAYMENTS TO BE MADE BY THE EF DID NOT EITHER RELIEVE THE GDR OF AN OBLIGATION TO PAY THE UNITED STATES, OR PROVIDE THE PERSONS ALREADY PAID FROM THE EF WITH A SECOND PAYMENT FOR THE SAME LOSS, THUS FAVORING THEM OVER ALL OTHER PERSONS PAID OUT OF THE FUND (WHO WERE OBLIGED TO RETURN TO THE EF ANY COMPENSATION PAID TO THEM FROM OTHER SOURCES FOR THE SAME LOSS).

6. THERE HAD BEEN FINE COORDINATION WITH THE FCSC WITH RESPECT TO THE US CLAIMS PROGRAMS FOR LOSSES IN OTHER STATES (POLAND, ETC.) THAT WERE ALSO COMPENSABLE TO GERMANS OR FORMER GERMANS OUT OF THE EF. IN THOSE CASES, THE NAMES OF CLAIMANTS FOR COMPENSATION FOR THE SAME LOSS FROM BOTH SOURCES WERE EXCHANGED BETWEEN THE FCSC AND THE BAA, AND THOSE PERSONS PAID BY THE FORMER WERE PAID LESS OR NOTHING FROM THE EF, AND THOSE

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ALREADY PAID FROM THE EF WERE PROVIDED WITH PAYMENTS FROM US CLAIMS FUNDS ONLY TO THE EXTENT THAT THEIR ENTITLEMENT FROM THAT SOURCE WAS GREATER THAN THE AMOUNT ALREADY PAID BY THE EF. IN THIS MANNER, BOTH OF THE PRIMARY CONSIDERATIONS THAT NOW MOTIVATED HIM AND THE BAA WITH RESPECT TO POSSIBLE EVENTUAL GDR CLAIMS PAYMENTS WERE DULY TAKEN INTO CONSIDERATION. HE AND THE BAA EXPECTED NOTHING DIFFERENT IN KIND WITH RESPECT TO THE CLAIMANTS FOR GDR LOSES. THE ONLY DIFFERENCE IN THE PRESENT SITUATION WAS THAT THE EF AND FCSC/GDR PAYMENT PROGRAMS WERE NOT RUNNING SIMULTANEOUSLY AS IN THE OTHER PROGRAMS; THUS, SOME KIND OF SPECIAL ARRANGEMENT WAS NECESSARY.

7. SCHAEFER SAID FURTHER THAT THE USG COULD NOT SERIOUSLY EXPECT THE BAA OR THE FRG GOVERNMENT, IF GDR COMPENSATION PAYMENTS WERE EVENTUALLY MADE TO WHAT MIGHT BE THE SEVERAL HEIRS OF EACH CLAIMANT, TO SEEK REPAYMENT OF ALL OR PART OF THE AMOUNTS OWING INTO THE EF FROM THOSE HEIRS AND TO LITIGATE IN THOSE
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CASES WHEN SUCH PAYMENT WAS NOT MADE VOLUNTARILY. AS SUCH AN EFFORT WOULD BE INFEASIBLE, AND IN LIGHT OF THE REASONABLE REQUIREMENTS OF THE BAA TO AVOID RELIEVING THE GDR OR DOUBLE PAYMENTS TO SOME EF BENEFICIARIES, THE BAA REQUIRED A SOLUTION SIMILAR TO THOSE ACHIEVED WITH RESPECT TO THE OTHER CLAIMS PROGRAMS OF THE US BEFORE IT COULD AGREE TO WITHDRAW ITS APPEALS FROM THE DECISION OF THE BERLIN ADMINISTRATIVE COURT IN THE CASES SIMILAR TO THE FREYMUTH CASE. AS FOR THE FREYMUTH CASE, SCHAEFER SAID IT APPEARED THAT FREYMUTH DID NOT HAVE A QUALIFYING CLAIM IN THE EYES OF THE FCSC; THUS, IN THAT CASE AND OTHERS LIKE IT, THE PROCESSING STOP WAS BEING TERMINATED.

8. EMBOFF STATED THAT HE HAD NOT BEEN AWARE OF THE DETAILS OF ARRANGEMENTS BETWEEN THE BAA AND THE FCSC WITH RESPECT TO THE OTHER FCSC CLAIMS PROGRAMS. IT WOULD BE HELPFUL TO THE EMBASSY AND THE DEPARTMENT IF SCHAEFER COULD PROVIDE THE EMBASSY WITH A BRIEF DESCRIPTION OF THOSE ARRANGEMENTS, WITH REFERENCES, IF POSSIBLE, TO THE CORRESPONDENCE REFLECTING THOSE ARRANGEMENTS. THE EMBASSY WOULD PROVIDE THIS TO THE DEPARTMENT IN FURTHER EXPLANATION OF THE FRG PROPOSAL AND THE CONTEXT OUT OF WHICH IT WAS MADE. SCHAEFER STATED THAT HE WOULD PROVIDE THE EMBASSY WITH SUCH A PAPER IN THE NEAR FUTURE.

9. THE TEXT OF THE EXPLANATORY PAPER LEFT BY SCHAEFER FOLLOWS:

BEGIN TEXT

EXPLANATION OF THE GERMAN PROPOSAL TO MAKE ADVANCE LIMITED OFFICIAL USE

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PAYMENTS

THE FOLLOWING SIMPLE THOUGHT UNDERLIES THE PROPOSAL OF THE FEDERAL REPUBLIC IN THOSE CASES WHICH FALL UNDER US LAW AS WELL AS UNDER THE GERMAN EQUALIZATION OF BURDENS (OVERLAPPING CLAIMS CASES) FOR A LUMP SUM REIMBURSEMENT INTO THE EQUALIZATION FUND CORRESPONDING TO THE PAYMENTS TO BE MADE FROM ANY FUTURE GDR CLAIMS SETTLEMENT:

1. POINT OF DEPARTURE

IT IS ASSUMED THAT OF ALL APPLICATIONS UNDER U.S. LAW, 3,000 CASES WILL BE DECIDED POSITIVELY AND THAT IN THE GERMAN EQUALIZATION OF BURDENS THERE WILL BE 900 OVERLAPPING CASES POSITIVELY DECIDED. THUS THE PROPORTION OF THESE CASES REPRESENTS 30 PERCENT.

2. CALCULATION BASED ON NUMBERS OF PERSONS

IF ONE PROCEEDS EXCLUSIVELY ON THE BASIS OF NUMBERS OF OVERLAPPING CLAIMS, THEN 30 PERCENT OF THE CONTRACTUAL SUM (PRESUMABLY MEANING THE LUMP SUM SETTLEMENT BY THE GDR -- EMBASSY COMMENT) WOULD BE TRANSFERRED ONWARD (TO THE FRG FOR PAYMENT INTO THE EQUALIZATION FUND -- EMBASSY COMMENT).

THIS METHOD OF CALCULATION IS A CRUDE ONE AS THE ACTUAL AMOUNTS OF DAMAGE AND COMPENSATION ARE NOT TAKEN INTO ACCOUNT AS A CORRECTING FACTOR.

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3. CALCULATION ON THE BASIS OF THE AMOUNT OF
COMPENSATION PAID

THUS, THE FOLLOWING METHOD OF CALCULATION MAY
BE TAKEN UNDER ADVISEMENT:

THROUGH COOPERATION BETWEEN THE FCSC AND THE FEDERAL
EQUALIZATION OFFICE (BAA) IT WOULD BE ESTABLISHED WHICH
VALIDATED DAMAGES HAVE BEEN DOUBLY RECOGNIZED, AND THE
AMOUNT OF DAMAGES DETERMINED BY THE FCSC WOULD BE USED.
AS THIS AMOUNT IS NOT YET KNOWN, AN EXAMPLE IS TAKEN
BASED ON THE ASSUMPTION THAT OF THE AMERICAN TOTAL
AMOUNT OF DAMAGES THAT HAS BEEN DETERMINED, 20 PERCENT
IS BASED ON OVERLAPPING CLAIMS. CONSEQUENTLY
A LUMP SUM REPRESENTING 20 PERCENT OF THE TOTAL AMOUNT
OF GDR DAMAGE PAYMENTS WOULD BE DIVERTED.

IN THE VERY UNLIKELY CASE THAT THE AMERICAN COMPEN-
SATION WOULD ON THE AVERAGE BE HIGHER THAN THE
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COMPENSATION FROM THE (FRG) EQUALIZATION OF BURDENS
PROGRAM, THE GERMAN PART WOULD BE REDUCED IN RELATION TO
THE CORRESPONDING TWO-PART TOTAL PAYMENT.

EXAMPLE: 20 PERCENT OF THE DAMAGE AMOUNTS CONCERN
OVERLAPPING CLAIMS. THE GERMAN
COMPENSATION FOR THESE EFFECTED
OVERLAPPING CLAIMS REPRESENTS ON THE
AVERAGE DM 8,000, ON THE OTHER HAND THE
AMERICAN COMPENSATION FOR SAME SET OF
PERSONS IS ON THE AVERAGE DM 10,000. IN
THIS CASE NOT 20 PERCENT WOULD NEED TO BE

PAID (INTO THE FRG EQUALIZATION FUND --
EMBASSY COMMENT), BUT RATHER,
CORRESPONDING TO THIS RELATIONSHIP, ONE-
FIFTH LESS, I.E., 16 PERCENT.

END TEXT

10. EMBOFF ASKED SCHAEFER HOW MANY CASES AND WITH WHAT

APPROXIMATE TOTAL AMOUNT OF COMPENSATION WERE INVOLVED

IN THE OVERLAPPING CLAIMS PROBLEM. SCHAEFER SAID HE
THOUGHT THAT THERE WERE ABOUT 3,000 CLAIMS PENDING FOR
COMPENSATION OUT OF A US/GDR SETTLEMENT AGREEMENT, ABOUT
900 OF WHICH WERE ALSO FILED FOR PAYMENT FROM THE EF WITH
RESPECT TO THE SAME PROPERTY LOSS. HE BELIEVED THAT
THE AVERAGE COMPENSATION PER CLAIM WOULD RUN ABOUT
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DM 8,000. THIS MEANT THAT THE AMOUNT OF COMPENSATION
AT ISSUE IN THIS PROBLEM WAS SOMEWHERE IN THE NEIGHBOR-
HOOD OF DM 7.2 MILLION. SCHAEFER EXPECTED TO HAVE MORE
ACCURATE FIGURES WITHIN A FEW MONTHS AND AGREED TO PASS
THEM TO THE EMBASSY.

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